

CHAPTER 18

Sustainability and Environmental Considerations

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1. Overview

a. Sustainability Practices

Leasing Specialists must be cognizant of sustainability issues when working on a lease procurement. Sustainability is related “to creating and maintaining conditions under which humans and nature can exist in productive harmony, that permit fulfilling the social, economic, and other requirements of present and future generations” (as referenced in Executive Order 13514: Federal Leadership in Environmental, Energy, and Economic Performance, dated October 8, 2009 - Section 19L). The common definition of sustainability relates to meeting the needs of the present without compromising the ability of future generations to meet their own needs.

Public Buildings Service (PBS) has incorporated energy efficiency and sustainability provisions in guidelines for owned and leased buildings since 1996, as new Federal laws, policies, and Executive orders have been issued. Today, there is much emphasis placed upon sustainability in the selection, design, construction, and operation of leased space. There are requirements for leased buildings to achieve a third-party certification for energy efficiency through the ENERGY STAR® program, while allowing for exceptions in certain defined circumstances. For some lease types, a Leadership in Energy and Environmental Design® certification is required¹. There are also sustainability requirements in the form of mandatory green lease paragraphs that are intended to provide minimum sustainability standards for the procurement of leases. These green paragraphs address the use of sustainable materials and services that may go into leased space, as well as the operation and maintenance of leased space.

b. Sustainability Goals and The Guiding Principles

PBS, a leader in sustainable real estate, is increasing the environmental efficiency of GSA's portfolio while meeting agency's mandated sustainability targets. Per Executive Order 13514, GSA, PBS, and PBS' client agencies must establish sustainability goals related to reducing greenhouse gas emissions reductions, and meet energy efficiency, water use reduction waste diversion, high performance green building and sustainable purchasing targets. Lease acquisitions must be made in a way that contribute toward meeting these goals.

All federal agencies must comply with OMB's guidance on high performance and sustainable buildings, which require that a percentage of owned and leased buildings (and all new construction) meet the Guiding Principles. The most recent version of OMB guidance dated December 2008 can be found at http://www.wbdg.org/pdfs/hpsb_guidance.pdf.

The Guiding Principles for Federal Leadership in High Performance and Sustainable Buildings were issued and adopted as a Memorandum of Understanding dated January 2006. They incorporate strategies related to designing, building, and operating buildings in a sustainable

¹ Section 436(h) of the Energy Independence and Security Act (EISA) requires GSA to evaluate green building certification systems every five years to identify a system and certification level “deem(ed) to be most likely to encourage a comprehensive and environmentally sound approach to certification of green buildings.” EISA directs the Director of GSA's Office of Federal High-Performance Green Buildings to provide the findings to the Secretary of Energy who, in consultation with the Department of Defense and GSA, formally identifies the system(s) to be used across the federal government. In 2006, GSA first evaluated certification systems focusing on new construction and major renovation. Based on this 2006 review, GSA identified the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) certification system for use in the Federal sector. Following this review, a LEED NC silver certification for lease-construction projects was made a requirement. GSA is currently evaluating several building certification systems as part of the five-year review cycle required by EISA.

manner. More recently, a number of statutes, regulations and policies impose mandated energy, environmental, and sustainability requirements on space leased by the Government. Refer to the Desk Guide introductory chapter for a list of Executive orders and Public Laws, and paragraph 5 of this Desk Guide chapter for more information on EO 13514.

c. Strategic Sustainability Performance Plan

The Strategic Sustainability Performance Plan (SSPP) is the GSA document that addresses and implements different provisions of Executive Order 13514. The SSPP serves as the green handbook for GSA, incorporating multiple sustainability requirements into one document. The SSPP sets timelines and goals associated with various sustainability metrics, and defines how GSA will use its influence to reduce the environmental impact of the Federal government.

GSA is required to demonstrate progress toward compliance with the Guiding Principles, based on established annual targets which increase progressively from 5 percent in Fiscal Year 2010, to 28 percent by 2020. The two alternative paths to achieve Guiding Principle compliance consist of either signing leases in buildings (or spaces) which are third-party LEED® or Green Globes®-rated, or including a specified list of mandatory green paragraphs in a lease procurement. At the end of each fiscal year, GSA reports to the Office of Management and Budget (OMB) and the White House Council on Environmental Quality (CEQ) on the number of buildings and leases in third-party rated space, and the inclusion of green lease paragraphs in lease procurements. This information is included on GSA's Sustainability and Energy Scorecard issued by OMB. Leasing Specialists must refer to Attachment 1 of this chapter for the matrix which identifies the required green lease paragraphs applicable to different lease situations and models. These green paragraphs are mandatory for a lease to be considered as Guiding Principle compliant (in the absence of the building or space having a LEED or Green Globes rating).

d. Environmental Considerations

Many sustainability provisions are related to minimizing the impact of environmental hazards such as radon, asbestos, mold, and unhealthy indoor air quality. These environmental hazards are also addressed in this chapter.

Some manufactured and naturally occurring chemicals in the office environment can cause health risks for the occupants. The Center for Disease Control and Prevention states that "maintaining a healthy office environment requires attention to chemical hazards, equipment and work station design, physical environment (temperature, humidity, light, noise, ventilation, and space), task design, psychological factors (personal interactions, work pace, job control) and sometimes, chemical or other environmental exposures."

e. Applicability

This policy applies to all lease actions.

All PBS employees associated with the leasing program must actively support environmental sustainability in GSA leasing to the highest extent feasible and use mandated sustainability and green lease paragraphs as required.

2. Energy and Sustainable Business Practice Requirements

a. Importance of Request for Lease Proposal and Lease Paragraphs

Sustainability requirements in lease contract paragraphs are either mandatory for all leases, mandatory for certain categories or sizes of leases, situationally applied, or optional. The mandatory or optional requirement is readily identifiable in the usually hidden blue text in the Request for Lease Proposal (RLP) or Lease. The specifications are designed to foster environmental best practices such as the use of public transportation, concentration of development in transit oriented urban centers and mixed-use locales, consumption of less energy and water, enhancement of indoor environmental quality, use of recycled and environmentally friendly materials, and recycling of construction and other waste.

Leasing Specialists must leave paragraphs with sustainability implications (whether mandatory or situational) intact as written to the fullest extent possible. Modification or elimination of these paragraphs must be avoided because these paragraphs help ensure meaningful progress is being made toward SSPP goals, including the annual number of leased assets reported as complying with the Guiding Principles. Refer to Attachment 1 of this chapter for a list of the required sustainability-related lease paragraphs.

b. Prescription of Request for Lease Proposal and Lease Paragraphs

Certain sustainable and green paragraphs are required in all RLPs and leases, while others are mandatory only in specialized circumstances as shown in the following categories:

- Green paragraphs are required for compliance with the Guiding Principles in all RLPs and leases for more than 5,000 rentable square feet. Green paragraphs are required for compliance with the ENERGY STAR® building label requirement (one of the paragraphs is required in all RLPs and leases except leases for rooftop antennas, parking garages, and land leases):
 - ENERGY STAR® paragraphs for existing buildings,
 - ENERGY STAR® paragraphs for lease construction projects,
- Green paragraphs required in lease construction projects for 10,000 rentable square feet or greater (LEED®-New Construction (NC) Silver situations),
- Green paragraphs required when LEED® for Commercial Interior Design (LEED®-CI) has been specified by the client agency.

3. Use of Green Building Certification Systems to Meet Sustainability Requirements in Lease Procurements

One way to meet GSA's SSPP compliance with the Guiding Principles is by signing a lease in a third-party, multi-attribute, green-rated building or space, such as those certified or rated by Leadership in Energy and Environmental Design® (LEED®) or Green Globes®.

a. What is Leadership in Energy and Environmental Design®?

LEED® is an internationally recognized certification system for rating the design, construction, and operation of high-performing, green buildings.

The U.S. Green Building Council (USGBC) is an independent, nonprofit organization unaffiliated with the U.S. Government which provides third party certification of compliance with its LEED® rating system. According to the USGBC, the number of LEED®-rated commercial buildings continues to steadily increase. (Visit the USGBC Web site, www.usgbc.org for the current number and list of LEED®-rated commercial buildings).

There are four categories within the LEED® rating systems that apply to commercial office buildings:

- New Construction (NC): Applies to new construction of an entire building, often to a build-to-suit.
- Commercial Interiors (CI): Applies to individual, interior tenant spaces.
- Existing Buildings: Operations & Maintenance (EB: O&M): Applies to ongoing operations and maintenance of an existing building.
- Core & Shell (CS): Applies to new speculative buildings where a developer controls the design and construction of the core and shell base building elements, but has no control over the design and construction of the tenant fit-out.

GSA is currently applying the first two LEED® ratings listed above (New Construction and Commercial Interiors) to leases as described in sub-paragraphs b and c below. A leased space that has achieved a LEED®-CI certification can be reported as complying with the Guiding Principles. Similarly in accordance with the OMB guidance on high performance green buildings and sustainable design (dated December 2008), a space leased in a LEED® certified building also meets this requirement.

b. LEED®-NC Silver for Lease Construction

In addition to getting the requisite approval for lease construction from GSA Central Office, Lease Contracting Officers must require new lease construction buildings to achieve a LEED®-New Construction (LEED®-NC) Silver (or higher) rating when the following conditions exist:

- The Government is purposefully seeking only new construction or full and open competition results in only new construction being offered; and
- The lease will be for 10,000 rentable square feet or more.

If a Silver rating is not supported by the market, that is, the Leasing Specialist cannot secure sufficient competition, offered rates are excessive, etc., the Lease Contracting Officer must provide written justification for not obtaining the rating in the Price Negotiation Memorandum.

Specific guidance on the required RLP and Lease paragraphs related to achieving a LEED®-NC Silver rating for new lease construction per each lease model can be found in the matrix in Attachment 1.

c. LEED® for Commercial Interiors (LEED®-CI)

LEED®-CI refers to the rating of individual tenant interior spaces. A LEED®-CI rating is available for use when specifically requested by a client agency. According to PBS pricing policy, the costs attributable to LEED®-CI must be paid by the client agency from the tenant improvement allowance. The certification and commissioning costs required to earn the LEED®-CI rating are the lessor's responsibility and must be covered in the shell price. More specific guidance on required RLP and Lease paragraphs related to LEED®-CI requirements per each lease model can be found in the matrix in Attachment 1.

d. What is Green Globes®?

Green Globes® is another building environmental design and management tool and rating system. It delivers an online assessment protocol, rating system, and guidance for green building design, operation, and management. Like LEED®, it provides market recognition of a building's environmental attributes through third-party verification. Green Globes® is an independent organization unaffiliated with the Government. The Green Globes® Web site (www.greenglobes.com) includes further information. In accordance with the OMB guidance on high performance green buildings and sustainable design (dated December 2008), a space leased in Green Globes®-rated building can be reported as complying with the Guiding Principles.

4. ENERGY STAR® for Lease Acquisition

a. The ENERGY STAR® Rating

ENERGY STAR® is a joint program of the U.S. Environmental Protection Agency (EPA) and the U.S. Department of Energy to improve energy performance in appliances and buildings and reduce greenhouse gas (GHG) emissions. ENERGY STAR® is a technical assistance and recognition program that offers owners and managers of certain building types access to free tools and resources to help them benchmark and evaluate their energy performance and reduce energy use and GHG emissions. As of the date of this chapter issuance, there are 15 building types in ENERGY STAR®, including offices, warehouses, courts, and data centers. ENERGY STAR®'s Portfolio Manager tool provides a cost effective means to track data required for reporting energy use, greenhouse gas emissions, and compliance with the Guiding Principles. For buildings that achieve a professionally verified rating of 75 or higher, the ENERGY STAR® label is available as an indicator of superior energy performance. Buildings carrying the ENERGY STAR® label "consistently use, on average, 35 percent less energy than their peers and emit 35 percent less carbon dioxide." (A Decade of ENERGY STAR® Buildings: 1999-2009, EPA, page 6).

b. ENERGY STAR® Label Requirement

Pursuant to the Energy Independence and Security Act of 2007 (EISA), all leases awarded on or after December 19, 2010 require that the building have earned the ENERGY STAR® label in the most recent year, (i.e., within 12 months prior to the due date for final proposal revisions), unless the lease meets specific exceptions provided in the statute (EISA Section 435). Sub-paragraph 4(f) of this chapter explains Offeror requirements if a building is utilizing an exception to the ENERGY STAR® label requirement.

To implement these EISA requirements for ENERGY STAR® labeled buildings, Leasing Specialists must include certain mandatory RLPs and lease paragraphs. Refer to the matrix in Attachment 1 for specific required RLP and Lease paragraphs for each lease model.

Except as provided in sub-paragraph 4d below, existing buildings must have earned the ENERGY STAR® label in the most recent year and show proof of it no later than the due date for final proposal revisions, unless the offered space meets one of the statutory exceptions listed in sub-paragraph 4e. All new construction (defined as buildings specifically built as a result of the Government's lease) must achieve an ENERGY STAR® label within 18 months after occupancy by the Government.

The Offeror is encouraged to include shared savings in the offer as a result of energy upgrades where applicable. ENERGY STAR® tools and resources can be found at the ENERGY STAR® Web site (www.energystar.gov). The term "most recent year" means that the date of award of the ENERGY STAR® label by EPA must not be more than 1 year prior to the due date for final proposal revisions. For example, an ENERGY STAR® label awarded by EPA on October 1, 2010, is valid for all lease procurements where final proposal revisions are due on or before September 30, 2011.

The ENERGY STAR® requirements do not apply to land leases, rooftop antenna leases, or parking garage leases. EPA does not issue ENERGY STAR® labels for these types of space and it is impractical to implement cost-effective energy efficiency improvements in these situations.

c. How to Earn the Label

Eligibility requirements for earning the ENERGY STAR® label are provided on the program's Web site: www.energystar.gov/eslabel. There is no charge to apply for or to receive the ENERGY STAR® label, but the building owner or manager must have a licensed professional (architect or engineer) attest to the accuracy of the application. EPA states that it typically takes 10 to 15 business days to process a properly completed application and award the ENERGY STAR® label; therefore, this requirement must be clearly stated in the earliest steps for procurement of space.

d. Time of Submission of Proof of ENERGY STAR® Label

Not later than the due date for final proposal revisions, Offerors must submit their proof of an ENERGY STAR® label. If they do not offer space with an ENERGY STAR® label, they must submit a written statement identifying cost-effective energy efficiency and conservation improvements that will be made. If no improvements can be made, the Offeror must demonstrate in writing to the Government why no energy efficiency and conservation improvements are cost effective, using the Building Upgrade Manual and Building Upgrade Value Calculator, two ENERGY STAR® online tools.

Building Upgrade Manual

http://www.energystar.gov/index.cfm?c=business.bus_upgrade_manual

Building Upgrade Value Calculator

http://www.energystar.gov/index.cfm?c=comm_real_estate.building_upgrade_value_calculator

Offerors of the following types of buildings may commit in writing (by the due date of final proposal revisions) that an ENERGY STAR® label will be earned, rather than achieve the label by the due date of final proposal revisions. In these instances the successful Offeror will have up to 18 months after occupancy by the Government, or as soon thereafter as the building is eligible for the ENERGY STAR® consideration, to achieve an ENERGY STAR label. In the following three instances there is no requirement to propose cost-effective energy efficiency and conservation improvements since an ENERGY STAR® label must be obtained:

- All existing buildings that have had an ENERGY STAR® label but are unable to obtain a label in the most recent year (i.e., within 12 months prior to the due date for final proposal revisions), because of insufficient occupancy.
- Newly built buildings that have used ENERGY STAR®'s Target Finder tool and either achieved a "Designed to Earn the ENERGY STAR®" or received an unofficial score (in strict adherence to Target Finder's usage instructions, including use of energy modeling if required) of 75 or higher prior to the due date for final proposal revisions and that are unable to obtain a label in the most recent year because of insufficient occupancy.
- An existing building that is unable to obtain a label because of insufficient occupancy but that can produce an indication, through the use of energy modeling or past utility and occupancy data input into ENERGY STAR®'s Portfolio Manager tool or Target Finder tool, that it can receive an unofficial score of 75 or higher using all other requirements of Target Finder or Portfolio Manager, except for actual data from the most recent year.

e. Allowed Exceptions to an ENERGY STAR® Building Label

Four statutory exceptions to the requirements for the ENERGY STAR® label include the following:

- No space is offered in a building with an ENERGY STAR® label in the delineated area that meets the functional requirements of an agency, including location needs. (Note: this will not be known until all offers are received);
- The agency will remain in a building it currently occupies;
- The lease will be in a building of historical, architectural, or cultural significance verified by listing or eligibility for listing on the National Register of Historic Places; or
- The lease is for 10,000 rentable square feet or less.

Being excepted from the ENERGY STAR® Label requirement does not mean being exempted from EISA Section 435 requirements. Cost-effective, (over the firm term of the lease), energy efficiency, and conservation improvements are required for excepted buildings. Only lease extensions, expansions within "the scope of the lease," and evaluated and unevaluated renewal options do not require cost-effective energy efficiency and conservation improvements. If the option rental price in an unevaluated renewal option is determined to be at market rent and the Other Than Full And Open Competition analysis demonstrates that it is desirable to exercise the option, the Leasing Specialist may request that the lessor voluntarily implement cost-effective energy efficiency and conservation improvements prior to exercising the option.

f. Requirements of ENERGY STAR®-Excepted Buildings for Energy Efficiency Building Improvements

If a building will not have an ENERGY STAR® label in accordance with one of the statutory exceptions listed in sub-paragraph e above, the successful Offeror must renovate the space for all energy efficiency and conservation improvements that would be cost-effective over the firm term of the lease, including, but not limited to improvements in lighting, windows, and heating, ventilation, and air conditioning systems.

Offerors are required to address in their written offer whether or not any cost-effective energy efficiency and conservation improvements can be made, and to itemize the upgrades to be done. If no improvements can be made, the Offeror must demonstrate in writing to the Government why no energy efficiency and conservation improvements can be made, using the Building Upgrade Manual and Building Upgrade Value Calculator ENERGY STAR® Online Tools (www.energystar.gov/index.cfm?c=tools_resources.bus_energy_management_tools_resources). Using the Offeror's online tool reports, the Lease Contracting Officer must evaluate the explanation for reasonableness based on the definitions of "cost effective" and "operational cost savings" in this Desk Guide chapter. If the Lease Contracting Officer determines the explanation to be unreasonable, then the Lease Contracting Officer must deem the offer to be technically unacceptable. In performing this evaluation which would result in the elimination of a lowest price offer, the Lease Contracting Officer must consult with the Office of Regional Counsel and technical experts including, but not limited to, the regional sustainability program manager and available technical contract resources.

The Lease Contracting Officer must document in the lease all cost-effective, energy efficiency, and conservation improvements to be made by the lessor, which must be accomplished according to the following timetable.

- With the exception of succeeding and superseding leases, the requirement must be met **prior to occupancy**.
- In the case of succeeding and superseding leases, the requirement must be met **not later than 1 year after signing the lease**.

Because of the ENERGY STAR® requirement in leasing, the evaluation of competition has become a very complex subject. For instance, in any one competition, ENERGY STAR® buildings may be competing with excepted buildings or may be competing only with ENERGY STAR® buildings. Therefore, Leasing Specialists must devote proper time and attention to this part of the evaluation of offers process. Lease Contracting Officers are reminded that they must carefully evaluate price and determine that the price is fair and reasonable before making an award.

To implement these requirements for ENERGY STAR® labeled buildings, all RLPs and leases must contain certain paragraphs. Refer to the matrix in Attachment 1 for specific required RLP and Lease paragraphs associated with each lease model.

The flow chart in Attachment 2 outlines the ENERGY STAR® process in lease acquisitions.

g. Terminology

- The term **"cost effective"** means an improvement that will result in substantial operational cost savings to the landlord by reducing electricity or fossil fuel consumption, water, or other utility costs.

- **The term "operational cost savings"** means a reduction in operational costs to the landlord through the application of cost-effective improvements that achieve cost savings over the firm term of the lease sufficient to pay the incremental additional costs of making cost-effective improvements.
- **The term "most recent year"** means that the date of award of the ENERGY STAR® label by EPA must not be more than 1 year prior to the due date for final proposal revisions. For example, an ENERGY STAR® label awarded by EPA on October 1, 2010, is valid for all lease procurements where final proposal revisions are due on or before September 30, 2011.

h. Extensions, Expansions, and Renewal Options

An ENERGY STAR® label, while encouraged, is not required when the agency will remain in a building it currently occupies. However, cost-effective energy efficiency and conservation improvements are required when an agency is staying in a building, with the following exceptions:

Extensions

Since extensions are interim housing solutions generally effective for 6 to 18 months, PBS has categorically determined that energy efficiency and conservation improvements would not be cost-effective over the life of an extension. Lessors' documentation of such is not required.

Expansions Within Scope

Expansions are typically small amounts of space that are added to accommodate an agency's program requirements by amending an existing lease to increase the square footage. Requirements to make cost-effective, energy efficiency and conservation improvements are not required for expansions within the "scope of the lease." Expansions that are determined to be outside "the scope of the lease" require opening lease terms to renegotiation, and in those situations the requirements for an ENERGY STAR® label or cost-effective energy efficiency and conservation improvements would apply.

Renewal Options

Renewal options are provisions in existing leases permitting continued occupancy of space at specified terms and conditions. They are not new lease contracts and therefore not subject to EISA. The Lessor is not required to make energy efficiency and conservation improvements or alternatively obtain an ENERGY STAR® label should the Government exercise an evaluated or unevaluated renewal option.

i. Simplified Leases

EISA requirements apply to simplified leases; therefore, all leases under the Simplified Lease Acquisition Threshold (SLAT) must include the appropriate paragraphs as noted in Attachment 1.

j. Lease Construction

EISA requirements apply to all new lease construction projects; therefore, the leases must include certain paragraphs in the RLP and the Lease. Refer to the matrix in Attachment 1 for required RLP and lease paragraphs for each lease model. The following guidelines also apply.

- All new construction must achieve an ENERGY STAR® label within 18 months after occupancy by the Government.

- To earn the ENERGY STAR® label, a building owner or representative must follow the instructions on the ENERGY STAR® Web site at www.energystar.gov/eslabel.
- Prior to the issuance of a permit for building construction, all new construction must obtain a Statement of Energy Design Intent (SEDI) using ENERGY STAR®'s Target Finder tool reflecting an ENERGY STAR® benchmark score of 75 or higher and a "Designed to Earn the ENERGY STAR®" certification.
- The Offeror is encouraged to purchase at least 50 percent of the Government tenant's electricity from renewable sources.

k. ENERGY STAR® Online Tools

The ENERGY STAR® Building Upgrade Manual and the Building Upgrade Value Calculator are two free tools that can be helpful to Offerors as they consider cost-effective, energy efficiency and conservation improvements to their buildings.

The ENERGY STAR® Building Upgrade Manual provides information on planning and implementing cost effective, energy saving building upgrades. The ENERGY STAR® Building Upgrade Manual is available on the ENERGY STAR® Web site at www.energystar.gov/bldgmanual.

The ENERGY STAR® Building Upgrade Value Calculator, developed by the U.S. EPA, is a product of the partnership between ENERGY STAR®, Building Owners and Managers Association (BOMA) International, and the BOMA Foundation. This calculator was developed as part of BOMA's Energy Efficiency Program, a series of courses designed to help commercial real estate practitioners improve their buildings' energy efficiency performance. The calculator tool was developed to help property professionals assess the financial value of investments in a property's energy efficiency performance. The Building Upgrade Value Calculator estimates the financial impact of proposed investments in energy efficiency in office properties. The calculations are based on data input by the user, representing scenarios and conditions present at their properties. The ENERGY STAR® Building Upgrade Value Calculator is available on the ENERGY STAR® Web site at www.energystar.gov/financiaevaluation.

ENERGY STAR® Labeled Buildings

The following Web site provides a listing of all ENERGY STAR® labeled buildings throughout the United States: http://www.energystar.gov/index.cfm?fuseaction=labeled_buildings.locator.

l. Lease Contracting Officer Follow-Up on Succeeding and Superseding Leases

Within 1 year of award, the Lease Contracting Officer must request Lessors to submit documentation regarding the completion of cost-effective, energy efficiency, and conservation improvements.

m. Sources for Further Information

Additional information may be obtained from regional sustainability program managers or from the Center for Lease Policy in Central Office.

n. Reporting the Effect of ENERGY STAR® on Rent

To keep track of the effect on rent of the ENERGY STAR® label requirement in lease acquisition, Regional Leasing Services Officers are required to track and report to Central Office the following information:

- All lease awards where the winning Offeror was not the lowest price technically acceptable offer as a result of the implementation of the ENERGY STAR® lease acquisition requirements; and
- The rent difference between the successful offer and the offer that would have won the award in the absence of the ENERGY STAR® requirement.

5. Executive Order 13514

Executive Order 13514, Federal Leadership in Environmental, Energy, and Economic Performance, which was issued on October 5, 2009, has several impacts on GSA leasing. It provides a path and mandate for Federal agencies to:

- Increase energy efficiency;
- Measure, report, and reduce their greenhouse gas (GHG) emissions from direct and indirect activities;
- Conserve and protect water resources through efficiency, reuse, and storm water management;
- Eliminate waste, recycle, and prevent pollution;
- Leverage agency acquisitions to foster markets for sustainable technologies and environmentally preferable materials, products, and services;
- Design, construct, maintain, and operate high-performance sustainable buildings in sustainable locations; and
- Strengthen the vitality and livability of the communities in which Federal facilities are located.

a. Greenhouse Gas (GHG) Emissions Reductions

Executive Order 13514 requires agencies to set their own targets for GHG emissions' reductions. The following reflects GSA's GHG emissions' targets:

- A 28.7-percent reduction in scope 1 and 2 GHG emissions in absolute terms from fiscal year 2008 by fiscal year 2020.
- A 14.6-percent reduction in scope 3 GHG emissions in absolute terms from fiscal year 2008 by fiscal year 2020.

b. Other Requirements of GSA's SSPP and Executive Order 13514

- A 2-percent annual reduction in potable water consumption intensity beginning in fiscal year 2008, with a 26-percent cumulative reduction by the end of fiscal year 2020 relative to baseline fiscal year 2007.
- A 2-percent annual reduction in industrial, landscaping, and agricultural water consumption with a 20-percent cumulative reduction by fiscal year end 2020 relative to a 2010 baseline.

- Diversion of at least 50 percent of non-hazardous solid waste, construction and demolition materials and debris by the end of fiscal year 2015.
- Advance regional and local integrated planning by ensuring that planning for new Federal facilities or new leases includes consideration of sites that are pedestrian friendly, near existing employment centers, and accessible to public transit, and emphasizes existing central cities, and in rural communities, existing or planned town centers.
- At least 15 percent of an agency's existing buildings and building leases above 5,000 gross square feet meet the Guiding Principles by fiscal year 2015. GSA has set a higher target of 18 percent.
- 95 percent of new contract actions, including task and delivery orders for products and services (with the exception of the acquisition of weapon systems), must be energy efficient (ENERGY STAR® or Federal Energy Management Program designated), water-efficient, biobased, environmentally preferable, non-ozone depleting, contain recycled content, or nontoxic or contain less toxic alternatives, where such products and services meet agency performance requirements.

6. National Environmental Policy Act Compliance

The National Environmental Policy Act (NEPA) of 1969 is a Federal law that is one of the Nation's fundamental charters for environmental protection. It requires that all Federal agencies consider the potential environmental impacts of proposed actions. NEPA promotes better agency decision making by ensuring that quality environmental information is available to agency officials and the public before the agency decides whether and how to undertake a major Federal action. NEPA requires an assessment of the environmental impact of every proposed Federal action that could affect the environment. Since all Federal actions are subject to the requirements of NEPA, all leasing actions must document NEPA compliance in the lease file.

The appropriate NEPA compliance for a specific action (Categorical Exclusion, Environmental Assessment, or Environmental Impact Statement) will be determined by the Regional NEPA Specialist or Regional Environmental Quality Advisor. The Leasing Specialist must initiate conversations with the regional NEPA expert early and often in the leasing process, before the opportunity to consider alternatives has been overtaken by the urgency of the lease requirement.

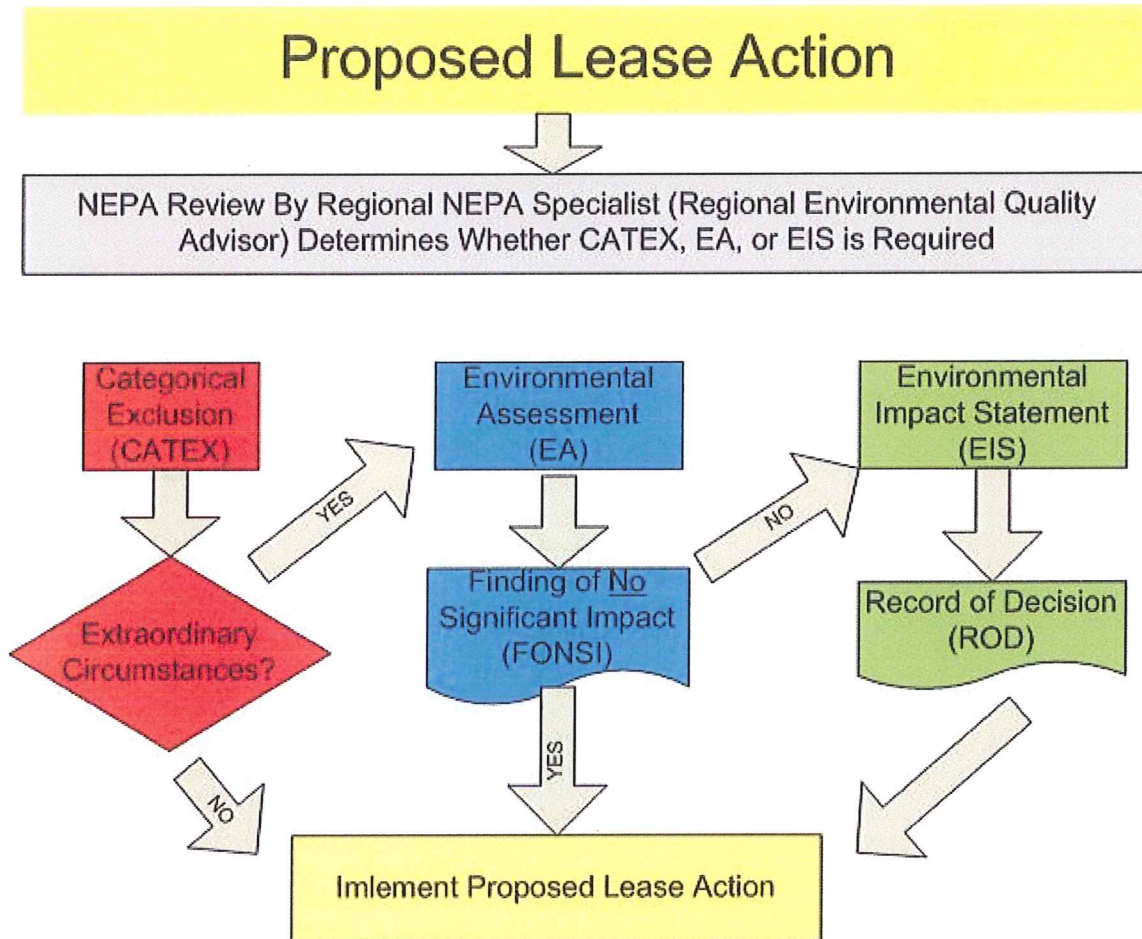
Most GSA leases either acquire space in an existing building that does not change the type or intensity of use, or are lease extensions, renewals, and succeeding leases. These are categorically excluded from a formal NEPA assessment.

The Council on Environmental Quality guidelines (at 40 CFR 1508.4) support a categorical exclusion (CATEX) for most leases. The guidelines define a CATEX to encompass actions that "do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency...and for which, therefore, neither an Environmental Assessment nor an Environmental Impact Statement is required."

Categorical exclusions will be considered either an "automatic" CATEX, meaning a type of action that experience has shown never poses a significant impact on the quality of the human environment, or a "checklist" CATEX, meaning a type of action that requires completion of a checklist to ascertain that extraordinary circumstances do not exist.

Additional information regarding the NEPA process and GSA's implementing instructions can be found in the PBS NEPA Deskguide (http://pbsportal.pbs.gsa.gov:7777/pls/portal/docs/page/PL/Documents/PL/library/NEPA_DeskGuide_1.pdf) and the GSA PBS NEPA Integration Guide (2007).

The flowchart below outlines the three levels of NEPA documentation required for a proposed lease action, including Categorical Exclusion (CATEX), Environmental Assessment (EA), or Environmental Impact Statement (EIS).



7. Sustainable Location Policy for Leases

Location policy considerations are an essential part of the requirements development and lease acquisition process. Desk Guide Chapter 2, New or Replacing Lease, provides a detailed description of regulations, policies, and factors that affect agencies' location decisions and selection of delineated areas.

Since location factors are not addressed in the current Guiding Principles (GP) for Federal Leadership in High Performance and Sustainable Buildings issued in December 2008 by OMB, they are not included in the list of mandatory lease paragraphs associated with GP compliance.

8. Asbestos

Leasing Specialists must request offers for space with no asbestos-containing materials (ACM), or with ACM in a stable, solid matrix (for example, asbestos flooring or asbestos cement panels) that is not damaged or subject to damage by routine operations. If no offers are received for such space, the Lease Contracting Officer may consider space with thermal system insulation ACM (for example, wrapped pipe or boiler lagging) that is not damaged or subject to damage by routine operations. If space that contains ACM is offered, Offerors must submit an asbestos management plan that conforms to EPA guidance prior to awarding a lease.

If asbestos abatement work is to be performed in the tenant space after occupancy, the Lessor must submit the occupant safety plan and a description of the methods of abatement and reoccupancy clearance, in accordance with Occupational Safety and Health Administration, the Environmental Protection Agency, the Department of Transportation, State, and local regulations and guidance, at least 4 weeks prior to commencement of the abatement work.

If any waste materials encountered during the demolition or construction phase are found to contain asbestos or other harmful substances, the lessor must handle and remove these in accordance with Federal and State laws and requirements concerning hazardous waste.

The asbestos-related RLP and Lease paragraphs are included in Attachment 1.

9. Radon in Air

a. Where Does Radon Occur?

Radon is an environmental hazard that can occur in many areas and can significantly contaminate indoor air quality. Radon gas from natural sources can accumulate in buildings and cause harm to human health.

b. Policy

If space is planned for occupancy on the second floor (above grade) or lower, the Leasing Specialist must require Lessors to test the space for radon in the air and provide evidence that the space has air levels that are below EPA's action concentration of 4 picocuries per liter. If radon above this level is detected, Lessors must complete space modifications to reduce the concentration to acceptable levels before the building can be occupied.

When the timing of occupancy is urgent, Lessors may test the space for 2 or 3 days using charcoal canisters or electrets ion chambers. In those cases, if radon levels fall below the action concentration, the space may be occupied. However, the Leasing Specialist must require the lessor to complete a follow-up test for a minimum of 90 days using alpha track detectors or electrets ion chambers. Leasing Specialists or Lease Administration Managers, if delegated, must obtain those test results and review them for compliance with EPA's action concentration.

c. Radon in Air Request for Lease Proposal and Lease Paragraph

If space will be occupied on the second floor (above grade) or lower, the Leasing Specialist must include one of two Radon in Air paragraphs. The long version of the Radon in Air paragraph is required for all leases in areas that have known radon issues. The short version of the paragraph is required in all other leases. All leases must include the Green Lease Submittals paragraph. Refer to Attachment 1 for RLP and Lease paragraphs related to Radon in Air requirements.

10. Radon in Water

a. Policy

If the water source in an offered building is not from a public utility, Leasing Specialists must require the Offeror to demonstrate compliance with EPA standards for radon in water. Leasing Specialists must not accept the space unless the space is in compliance with the standards.

b. Implementation

When the delineated area or some potential leased buildings in a delineated area do not use water from a public utility, Leasing Specialists must include the Radon in Water paragraph in the lease and collect a certification of compliance from each affected Offeror.

11. Indoor Air Quality

a. Policy

Leases require Lessors to maintain healthy indoor air quality and control for certain harmful contaminants. Lessors must respond to complaints about air quality and take appropriate corrective action where air quality does not meet applicable standards.

Directly related to indoor air quality is the use of non-harmful, environmentally preferable materials. Lessors must use environmentally preferable products and materials that contain recycled material, are biobased, and are rapidly renewable. More information is listed on EPA's environmentally preferable purchasing Web site (www.epa.gov/epp) and USDA's bio-preferred products Web site (www.biopreferred.gov).

b. Implementation

Multiple paragraphs in the lease restrict or prohibit the use of harmful materials and contaminants used in tenant build-out components, including paint, carpet, adhesives, wall covering, cleaning products, etc.

Additional lease paragraphs address the proper filtering, ventilation, and flush-out of tenant spaces that could contain harmful contaminants and chemical emissions. All of these lease paragraphs are intended to enhance and maintain healthy indoor air quality.

More specific guidance related to required RLP and Lease paragraphs associated with each lease model can be found in the matrix in Attachment 1.

12. Mold

a. Policy

All Lessors must provide space to the Government that is free from “actionable mold” and free from any conditions that reasonably can be anticipated to permit the growth of actionable mold. “Actionable mold” is mold in excess of that found in the local outdoor air.

The Government has the right to evaluate and inspect for the presence of mold or mold indicators. Lessors are responsible for conducting remediation in situations where actionable mold is present.

b. Implementation

Leasing Specialists must include the Mold paragraph in all Leases.

13. Recycling and Reuse

a. Policy

There are multiple provisions in the RLP and lease related to recycling, as well as the reuse of materials. Lease paragraphs apply to: i) the use of products with recycled content; ii) the recycling of products used in the course of the construction and build-out of space, and iii) the lessor’s establishment of an ongoing recycling program in tenant spaces.

- The Lessor must use recycled content products designated by EPA in the Comprehensive Procurement Guidelines (CPG), and comply with the Resource Conservation and Recovery Act (RCRA). The CPG lists designated recycled content products. The list of designated products, EPA’s recommendations, and lists of manufacturers and suppliers of the products can be found at www.epa.go/cpg.
- Lessors are also required to recycle construction waste generated from new construction and the buildout of tenant space. Recycling construction waste is mandatory during the demolition and construction phases of a project.
- The reuse of building component items and materials is preferable to recycling them. Items and materials existing on the premises or to be removed from the premises during the demolition phase are eligible for reuse in the construction phase of a project. The Green Lease Submittals and Existing Fit-Out, Salvaged, or Reused Building Materials paragraphs in the lease require the Lessor to provide a reuse plan to the Lease Contracting Officer(LCO).

b. Implementation

Many lease paragraphs are related to recycling and reuse, and must be included in all lease procurements. Examples are identified in Attachment 1 and include: Recycled Content Products (Shell); Construction Waste Management (Shell); Green Lease Submittals (Shell); Existing Fit-Out, Salvaged, or Reused Building Materials (Shell); Environmentally Preferable Products (Shell);



Restroom – Partitions (Shell); Ceilings (Shell); Recycling (Obligations During Lease Term); and Selection of Paper Products (Obligations During Lease Term).

14. Other Environmental Considerations

a. Hazardous Materials

The Hazardous Materials paragraph must be included in all leases. Leased space must be free of hazardous materials according to applicable Federal, State, and local environmental regulations.

The Construction Waste Management paragraph in the lease addresses the handling and removal of harmful and hazardous substances. If any waste materials encountered during the demolition or construction phase are found to contain lead, asbestos, polychlorinated biphenyls (PCBs) or other harmful substances, they must be handled and removed in accordance with Federal and State laws.

Construction materials recycling records must be maintained by the Lessor and must be accessible to the Lease Contracting Officer. Records must include materials recycled or land-filled, quantity, date, and identification of hazardous wastes.

Leasing Specialists and Lease Contracting Officers should consult with regional environmental professionals and the Office of Regional Counsel if leased space had prior hazardous operations or if the property was other than typical office space.

b. Polychlorinated Biphenyls (PCBs) and Lead Products

Leasing Specialists must be aware that there are harmful health effects associated with PCBs and lead products. PCB production was banned by the United States Congress in 1979 due to their toxicity and classification as a persistent organic pollutant. The U.S. Consumer Product Safety Commission banned lead paint in 1977. The U.S. has regulations prohibiting lead paint, although lead paint may still be found in older properties painted prior to the introduction of such regulations.

The Construction Waste Management paragraph in the lease addresses the handling and removal of these harmful substances. If any waste materials encountered during the demolition or construction phase are found to contain lead, asbestos, polychlorinated biphenyls (PCBs), or other harmful substances, they must be handled or removed in accordance with Federal and state laws and requirements concerning hazardous waste.

It is recommended that Leasing Specialists and Lease Contracting Officers consult with regional environmental professionals and the Office of Regional Counsel if leased space had prior hazardous operations or if the previous use of the property was other than typical office space.

c. Climate Change Adaptation

A GSA Instructional Letter was issued on September 30, 2011, prescribing policies and establishing responsibilities and procedures to follow for integrating climate change adaptation planning into GSA operations and policies. The Instructional Letter was issued pursuant to Section 8(i) of Executive Order 13514, and outlines GSA's climate change adaptation plans based on GSA's evaluation of climate change risks and specific vulnerabilities. Climate Change Adaptation planning is vital for GSA to secure the Federal property investments and remain



responsive to customer agency needs. GSA's climate change adaptation plans are being developed to incorporate short-term and long-term strategies for addressing incremental climate change and variability.

Because the Government self-insures its property, special locational and building attributes related to the possible impact of potential climate change must be considered for specialized uses involving valuable equipment (such as data centers), or highly strategic missions. For example, locating a data center near, (but not in) a floodplain should be avoided because possible climate change could result in an expansion of the floodplain to encompass the leased location. Both the potential loss of the equipment and the cost of its relocation would be expensive should climate change occur that would jeopardize its safety.

15. Green Purchasing Plan

A 2011 GSA Order (OGP 2851.2) addressing Executive Order 13514 and the Strategic Sustainability Performance Plan established the Green Purchasing Plan (GPP), which includes requirements to promote the purchase of environmentally sustainable products and services. The GPP incorporates all Federal green purchasing requirements in one place. The GPP Order outlines agency-wide guidance to develop and maintain an effective green purchasing plan. Executive Order 13514 requires the Federal Government to demonstrate leadership in sustainable acquisition and foster the market for sustainable technologies and environmentally preferable materials, products, and services. It also requires Federal agencies to ensure that 95 percent of new contract actions, including task and delivery orders for products and services, are energy-efficient, water-efficient, biobased, environmentally preferable, non-ozone depleting, contain recycled content, or are non-toxic or less-toxic alternatives.

GSA's GPP fulfills the green product procurement requirements of various Federal laws, policies, and Executive Orders. The Public Buildings Service meets the intent of the GPP goals by incorporating sustainability provisions in the leasing program. There are over 40 green paragraphs and provisions in GSA's standard lease document related to the sustainable build-out and operation of tenant spaces.

Reporting requirements for the GPP are addressed with the quarterly Guiding Principle compliance reporting that is provided to the Office of Management and Budget and the White House Council on Environmental Quality.

Attachment 1: Matrix of Green RLP and Lease Paragraphs

The following chart identifies sustainability-related Request for Lease Proposal (RLP) and Lease paragraphs associated with each lease model and the corresponding sustainability objective. The chart first identifies RLP and Lease Paragraphs required to comply with the Guiding Principles (GP), and then identifies sustainability-related paragraphs that are required, yet not part of green paragraphs related to GP compliance.

Green RLP and Lease Paragraphs Required to Comply with Guiding Principles

Sustainable (Green) Lease Paragraph	Standard Model	Streamlined Model	Succeeding/Superseding Model	Simplified Model	On-Airport Model	Sustainability Objective Promoted
RLP						
Energy Independence and Security Act	Include	Include	Include	Include		Energy Efficiency, Reduced Energy Consumption
Additional Submittals	Include					Energy Efficiency, Use of Recycled Products, Use of Low Impact Materials
Additional Submittals (STREAMLINED)		Include				Energy Efficiency, Use of Recycled Products, Use of Low Impact Materials
Additional Submittals (SUCCEEDING)			Include			Energy Efficiency, Use of Recycled Products, Use of Low Impact Materials
EISA Submittals				Include		Energy Efficiency, Reduced Energy Consumption
LEED for Commercial Interiors (CI)	Include	Include				Energy Efficiency, Use of Recycled Products, Low Impact Materials
Construction Standards and Shell Components (Shell)						
Recycled Content Products (CPG)	Include	Include	Include	Include		Use of Recycled Products
Environmentally Preferable Building Products and Materials (Shell)	Include	Include	Include	Include		Reuse of Materials, Use of Low Impact Materials
Existing Fit-Out: Salvaged, Reused Building Materials (Shell)	Include	Include	Include	Include		Reuse of Materials
Construction Waste Management	Include	Include				Recycling of Waste Materials
Construction Waste Management (SUC)			Include			Recycling of Waste Materials
Wood Products	Include	Include		Include		Use of Low Impact Materials
Adhesives and Sealants	Include	Include		Include		Avoidance of Toxic Products
Vestibules	Include	Include		Include		Energy Conservation

Sustainable (Green) Lease Paragraph	Standard Model	Streamlined Model	Succeeding/Superseding Model	Simplified Model	On-Airport Model	Sustainability Objective Promoted
Vestibules (SUC)			Include			Conservation
Energy Independence and Security Act	Include	Include	Include	Include	Include	Energy Efficiency, Reduced Energy Consumption
Ceilings	Include	Include	Include			Use of Recycled Content Products
Ceilings (SIMP)				Include		Use of Recycled Content Products
Insulation: Thermal, Acoustic, & HVAC (Shell)	Include	Include	Include	Include		Use of Low Impact Materials
Painting – SHELL	Include	Include	Include	Include		Use of Low Impact Materials
Restrooms	Include	Include	Include	Include		Reduced Water Consumption and Use of Recycled Materials
Heating, Ventilation, & Air Conditioning – SHELL	Include	Include	Include			System Optimization for Efficiency, Maintaining Healthy IAQ
Heating, Ventilation, & Air Conditioning – SHELL (SIMP)				Include		System Optimization for Efficiency, Maintaining Healthy IAQ
Heating, Ventilation, & Air Conditioning – SHELL (ON AIRPORT)					Include	System Optimization for Efficiency, Maintaining Healthy IAQ
Lighting: Interior and Parking – SHELL	Include	Include	Include			Reduced Energy Consumption
Lighting: Interior and Parking – SHELL (SIMP)				Include		Reduced Energy Consumption
Energy Efficiency Conservation for New Construction	Include					Energy Efficiency, Reduced Energy Consumption
Leadership in Energy and Environmental Design – LEED	Include					Energy Efficiency, Use of Recycled Products, Low Impact Materials
Leadership in Energy and Environmental Design – LEED (STREAMLINED)		Include				Energy Efficiency, Use of Recycled Products, Low Impact Materials
Indoor Air Quality During Construction	Include	Include	Include	Include		Use of Low Impact Materials
Systems Commissioning	Include	Include	Include			Energy Efficiency

Sustainable (Green) Lease Paragraph	Standard Model	Streamlined Model	Succeeding/Superseding Model	Simplified Model	On-Airport Model	Sustainability Objective Promoted
Plumbing Fixtures: Water Conservation (Shell)	Include	Include	Include	Include		Potable Water Conservation
Green Lease Submittals	Include	Include				Energy Conservation, Energy Efficiency, Low Impact Materials
Green Lease Submittals (SIMP) (Shell)				Include		Energy Conservation, Energy Efficiency, Low Impact Materials
Tenant Improvement (T.I.) Components						
Doors: Hardware	Include	Include		Include		Use of Low Impact Materials
Doors: Hardware (SUC)			Include			Use of Low Impact Materials
Wall Finishes	Include	Include	Include	Include		Use of Low Impact Materials
Painting – T.I.	Include	Include	Include	Include		Use of Low Impact Materials
Floor Coverings and Perimeters	Include	Include	Include	Include		Use of Low Impact Materials
Heating & Air Conditioning	Include	Include		Include		Energy Efficiency
Heating & Air Conditioning (SUC)			Include			Energy Efficiency
Utilities, Services, and Obligations (Util/Oblig) During the Lease Term						
Heating and Air Conditioning	Include	Include	Include	Include		Energy Efficiency
Janitorial Services	Include	Include	Include	Include		Use of Low Impact Materials
Selection of Cleaning Products (Util/Oblig)	Include	Include	Include	Include		Use of Low Impact Materials
Selection of Paper Products	Include	Include	Include	Include		Use of Low Impact Materials
Landscaping	Include					Water Conservation, Reduced Chemical Use
Landscaping (SUC)			Include			Water Conservation, Reduced Chemical Use
Recycling	Include	Include	Include			Recycling of Waste Materials
Recycling (SIMP)				Include		Recycling of Waste Materials
Recycling (ON AIRPORT)					Include	
Indoor Air Quality	Include	Include	Include	Include	Include	Healthy Indoor Air Quality, Use of Low Impact Materials
Mold	Include	Include	Include			Healthy Air Quality
Mold (SIMP)				Include		Healthy Air Quality
Utility Consumption Reporting	Include	Include	Include	Include		Energy Efficiency and Energy Conservation



**Sustainability-Related Paragraphs: Required, But Not Part of Green Paragraphs
Mandated for Compliance With the Guiding Principles**

Sustainable (Green) Lease Paragraph	Standard Model	Streamlined Model	Succeeding/ Superseding Model	Simplified Model	Sustainability Objective Promoted
RLP: Neighborhood, Parking, Location, Amenities, and Public Transportation	Include	Include		Include	Efficient Location
RLP: Asbestos	Include	Include	Include	Include	Healthy Indoor Air Quality
Lease: Construction Waste Management (related to Asbestos)	Include	Include	Include	Include	Healthy Indoor Air Quality
Lease: Asbestos Abatement	Include	Include	Include	Include	Healthy Indoor Air Quality
Lease: Radon in Air	Include	Include	Include	Include	Healthy Indoor Air Quality
Lease: Radon in Water	Include	Include	Include	Include	Healthy Indoor Air Quality
Lease: Hazardous Materials	Include	Include	Include	Include	Healthy Indoor Air Quality

Attachment 2: ENERGY STAR® Process Flowchart

